Ky. L. Rep., 615; *McKeen v. Haseltine,* 46 Minn., 426; *Hill v. Newman,* 38 Pa. St., 151; *Contra, Webster v. Real Estate Improvement Co.,* 140 Mass., 526.

MUNICIPAL CORPORATIONS—FRANCHISES—POWER OF REVOCATION.—CITY OF NEW YORK V. MONTAGUE, 124 N. Y. SUPP., 959—*Held,* that the franchise to operate a street railroad springs from the state, and not from the city where its lines lie, though it is essential that the consent of the municipal authorities should be secured, and hence the right to revoke the franchise rests in the state, and the municipality cannot move to compel a removal of such a company's tracks on the ground that they constitute a nuisance, not from operation in a manner not authorized by the grant, but for mere nonuser.

It is the general rule that the power to grant franchises is fixed in the sovereign state. *People's Railroad v. Memphis Railroad,* 10 Wall. (U. S.), 38; *The Denver & Swansea Railway Co. v. The Denver City Railway Co.,* 2 Colo., 673. But where the charter of the municipality derived from the state sanctions such an act, a city may grant a charter in the capacity of agent for the state. *Port of Mobile v. Louisville & Nashville R. R. Co.,* 84 Ala., 115. And it is well settled that a franchise having been granted by a state, the permission of the city granted to the corporation to exercise its charter rights is not a franchise, but a mere license. *Chicago City Railway Co. v. The People,* 73 Ill., 541. Moreover, in several states constitutional amendments have been passed prohibiting a grant of a franchise to a street railway without the consent of the municipal authorities. *Chicago City Railway Co. v. Story,* 73 Ill., 541. But a franchise once granted and accepted is in the nature of a contract, irrevocable by the state. *Dartmouth College v. Woodward,* 4 Wheat. (U. S.), 518. The same thing is true in case of a municipality, and consent once given to a franchise cannot, in absence of statute to the contrary, be withdrawn. *Africa v. City of Knoxville,* 70 Fed., 729. But where the public health or public morals are involved, the franchise is revocable by the state. *Butchers' Union Co. v. Crescent City Co.,* 111 U. S., 746.

MUNICIPAL CORPORATIONS—POLICE POWER—ORDINANCES.—CITY OF BUFFALO V. GEO. P. RAY MFG. CO., 124 N. Y. SUPP., 913.—*Held,* that the right to adopt ordinances in the exercise of a city's police power is limited only by the Constitution and statutes, and the reasonableness of the ordinance, without reference to whether it deals with a condition constituting a common law nuisance or not.

A municipality has such powers as the legislature thinks it wise to grant for the public good, either by special charter or general laws. *People v. Hill,* 7 Cal., 97. But it can exercise no power which is repugnant to the common or statute law of the state. *Haywood v. Savannah,* 12 Ga., 404. And in the exercise of police power, it must be fairly included in the grant. *Judy v. Lashley,* 50 W. Va., 628. A chartered municipal corporation may, by ordinance, duly enacted, not manifestly unreasonable or oppressive, nor unwarrantably discriminatory, prohibit things

which were not public nuisances at common law. *Pittsburg v. Keech,* 21 Pa. Super Ct., 548; *Com. v. Parks,* 155 Mass., 531. But in *Everett v. Council Bluffs,* 46 Ia., 66, the court declared that the municipality has no such authority unless it has been given by common or statute law. Yet, when it is a nuisance, *per se,* it unquestionably has the power. *Railroad v. Lakeview,* 105 Ill., 207. But it cannot make that a nuisance which, in its nature, is not one. *Ward v. Little Rock,* 41 Ark., 526. And it was held in *Opehouses v. Norman,* 51 La. An., 736, that where a thing is complained of as a nuisance, a municipal corporation in exercise of its police power, may make regulations for its suppression and prohibition. And the ordinance is valid unless shown to be unreasonable. *Railroad v. Casey,* 26 Pa., 287.

STATUTES—CLASSIFICATION OF CITIES—"PRIVATE, LOCAL, OR SPECIAL LAW."—WILSON V. MCKELNEY, 77 ATL. REP., 94 (N. J.).—*Held,* that the act creating a board of public works in cities having a population of not less than 100,000 nor more than 200,000 inhabitants is not a "private, local, or special law," affecting the internal affairs of towns or counties, within the constitutional prohibition. Pitney, Bergen and Garrison, JJ., *dissenting.*

The distinction necessary to mark a class, under the constitutional prohibition of special and local legislation, must be something in the situation or circumstances of the places embraced by the enactment, which would render like powers, if granted, inappropriate to and unavailable for other places. *Van Geisen v. Bloomfield,* 47 N. J. L., 442. And it seems to be generally held that a legislature may pass acts classifying cities according to their population, as a necessary means of providing for the local governments, best adapted to their needs, and in so doing it is not violating the constitutional provision against local and special legislation. *In re Ruan St.,* 132 Pa., 257; *State v. Baker,* 55 Ohio, 1. And it is the only proper classification; geographical distinctions cannot be resorted to without entering the domain of special legislation. *Commonwealth v. Patton,* 88 Pa., 258. Such an act is constitutional when applied to cities of a certain population or class, providing for public boards. *Warner v. Hoagland,* 51 N. J. L., 62. Although only one city was affected by the act at the time of passage. *Van Reipen v. Jersey City,* 58 N. J. L., 262. And the courts cannot inquire as to whether the legislature, in fixing the standard of classification purposed bringing only a single city under the act. *State v. Kalsem,* 130 Ind., 434. And in *Lloyd v. Smith,* 176 Pa., 213, the court holds that after actual classification has been made, the court is the final interpreter of the Constitution to see that it is not special legislation under that guise.

TRUSTS—MINGLING TRUST FUND.—TREACY V. POWERS, 127 N. W., 936 (MINN.).—*Held,* that a trustee cannot mingle the trust estate with his own and deny to the *cestui que trust* the option of following the joint affairs and availing himself of the proceeds the trustee may have realized from his improper conduct.